1976

Salt Lake City and Murray City v. Salt Lake County, Delmar L. Larsen, and W. Sterling Evans : Brief of Respondent

Utah Supreme Court

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SALT LAKE CITY, a municipal corporation of the State of Utah, and MURRAY CITY, a municipal corporation of the State of Utah,

Plaintiffs-Respondents,

-vs-

SALT LAKE COUNTY, a body corporate and politic of the State of Utah; DELMAR L. LARSEN, Sheriff of Salt Lake County, W. STERLING EVANS, Clerk of Salt Lake County,

Defendants-Appellants.

Case No. 14422

BRIEF OF PLAINTIFF-RESPONDENT
Salt Lake City Corporation

Appeal from the Judgment of the Third District Court, Honorable Bryant H. Croft, Judge.

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Plaintiffs-Respondents,	)	
-vs-	)	
SALT LAKE COUNTY, a body corporate and politic of the State of Utah; DELMAR L. LARSEN, Sheriff of Salt Lake County; W. STERLING EVANS, Clerk of Salt Lake County,	)	
Defendants-Appellants.	)	

BRIEF OF PLAINTIFF-RESPONDENT
Salt Lake City Corporation

NATURE OF CASE

This is an action to require Salt Lake County, and its County Clerk and County Sheriff to accept and serve legal documents, without charge, pursuant to the provisions of Section 21-7-2, Utah Code Ann. 1953.

DISPOSITION IN LOWER COURT

Judge Bryant H. Croft of the Third Judicial District ruled that Section 21-7-2, Utah Code Ann. 1953, exempted cities from paying fees to the clerk and the sheriff for filing and service of papers. The Lower Court, thus, granted Plaintiff-Respondent, Salt Lake City's, Motion for summary Judgment and denied Defendants' Motion for Summary Judgment.

RELIEF SOUGHT ON APPEAL

The plaintiff-respondent, Salt Lake City, seeks this Court to affirm the ruling of the lower court that cities are exempt from filing, and service fees.

STATEMENT OF FACTS

Cities have not been charged for filing civil papers or serving papers since 1898 in any State court, including the Utah Supreme Court. In September of 1975, Salt Lake County notified Salt Lake City that they would start charging for these services and, in fact, did charge for the service. The City brought suit for Declaratory Judgment and Writ of Mandamas compelling the defendants to conform to the requirements of Section 21-7-2, Utah Code Ann. 1953. Murray City was granted leave to intervene as a party-plaintiff.

ARGUMENT

POINT I

IT IS THE INTENT OF THE LEGISLATURE WHICH GOVERNS THE CONSTRUCTION OF ANY STATUTE.

> "In the interpretation of statutes, the legislative will is the all-important or controlling factor." 73 Am.Jur. 2d, "Statutes", § 145.

The Rules of Statutory Construction are designed for no other reason than to ascertain and declare the intention of the Legislature.

> "However, since all rules for the interpretation of statutes of doubtful meaning have for their sole object the discovery of the legislative intent, every technical rule as to the construction of a statute must yield to the expression of the paramount will of the legislature." 73 Am.Jur. 2d, "Statutes", § 146.

This point was stated by the United States Supreme Court in one of the earliest cases setting forth what plan would be good for this Country:

> "And the intention of the Legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding. Brown v. Barry, 3 U.S. 365, 1 L.Ed. 638 (1797). (Emphasis added)

The Utah Supreme Court has also clearly stated this point in Rowley v. Public Service Commission, 112 U.116, 185 P.2d 514 (1947). This Court observed:

> ". . . it is well to determine the purpose of the enactment. This is of importance in interpreting the act, as the purpose which underlies a statute is often regarded as speaking as plainly as the words forming the enactment."

At the end of the opinion, the Court quoted Sutherland on Statutory Construction:

> "'In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit the intention is to be collected from the context, from the occasion and necessity of the law; from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant with reason and good discretion.'"

Therefore, the question before the Court in construing Section 21-7-2, Utah Code Ann. 1953, becomes: What did the Legislature intend when they enacted the statute in question, and what does that statutory language provide?"

POINT II

LEGISLATIVE HISTORY AND INTERPRETATION OF THE STATUTE IN QUESTION LEAVES NO DOUBT CITIES ARE EXEMPT FROM PAYING COUNTY FILING OR SHERIFF SERVICE FEES.

The original provision governing fees, as passed at the First Session of the State Legislature, reads as follows:

> "The officers mentioned in this act are not in any case except for the State or a county, to perform any official services, except on cases of habeas corpus, and on such payment the officer must perform the service required." Laws of Utah, Chapter CXXXI, § 161 (1896). (Emphasis added.

The Court will note that only counties and the State were exempted from paying fees to the sheriff under this statute. In 1898 this statutory provision was changed to read:

> "The state and county officers mentioned in this title shall not in any case perform any official service unless the fees prescribed for such service are paid in advance, and on such payment the officer must perform the service required; and for every failure or refusal to perform official duty, when the fees are tendered, any officer shall be liable upon his official bond; provided, that no fees shall be charged the state, or any county or subdivision thereof, or any public officer acting therefor, or in cases of habeas corpus, or in criminal causes before final judgment, or for administering and certifying the oath of office, or for swearing pensioners and their witnesses, or for filing and recommending bonds for public officers." Revised Statutes of Utah 1898, Chapter 7, § 1016. (Emphasis added)

The language above quoted has remained the same and is the language of the present statute, above quoted, despite revisions of the code in 1917, 1933, 1943 and 1953.

This amendment was considered to be an important modification of the law. This point was stated by the Utah Code revision commission notes of 1898. They said:

> ". . . of the changes made by the commission and adopted by the legislature, the more important are as follows: . . . Amendment in fee bills; . . ." Preface to Revised Statutes of Utah 1898.

One of the changes in "fee bills" was the inclusion of the phrase

"or county or subdivision thereof" in the exemptions. Thus, the Legislature deliberately amended the restrictive exemption of the former statute and included in its new law an exemption for any "subdivision" of the State. Those word changes were considered important and must be given meaning. The only real question before the Court is to construe the legislative intent when it added to the exempt classifications a "subdivision" of the State or County. That is, was it the intent of the legislative amendment to grant cities an exemption from county filing and service charges?

In construing that intent, of great significance is the administrative interpretion placed on the amendment language for the past 75 years of its existence. The undisputed record shows that since 1898 no municipal subdivision has been charged for any fee, either to file civil complaints or for service of process. In fact, the undisputed facts show that the Supreme Court of Utah and the Third Judicial District Courts have not charged cities since 1898 for court costs. Why? Because the contemporary clerks and judges were aware that the 1898 change in fee bills, included an exemption for cities. For over 75 years, the persons charged with implementing legislative intent have consistently construed the statute to exclude cities from payment of fees. This Court has ruled that administrative interpretation is entitled to some consideration and may be regarded as persuasive. Kennecott Copper Corporation v. Anderson, 30 U.2d 102, 514 P.2d 217.

Appellant submits 75 years of unswerving interpretation is persuasive

Significantly, no Legislature has changed this statutory language even though the Legislature has been aware of the administrative interpretation placed upon it by the Court Clerks and Sheriffs in every judicial district of this State. The Legislature in retaining the language, despite several recodifications and knowledge of the administrative interpretations thereof, must be presumed to have adopted, if not intended, the result that cities are included in the exemption. 82 C.J.S. Statutes, § 370, p. 855, State Board of Land Commissioners v. Ririe, 56 U.213, 190 P. 59, State v. Hatch, 9 U.2d 288, 342 P.2d 1103.

POINT III

THE ENGLISH LANGUAGE CONSTRUCTION OF SECTION 21-7-2, UTAH CODE ANN. 1953, CLEARLY SHOWS THAT THE CITY IS EXEMPTED FROM THE PAYMENT OF FEES.

The phrase "or any county or subdivision thereof" clearly relates back to the noun "State." The modifier is the whole word "State." Any other construction would make the word "subdivision" surplusage and duplicative of the word "County."

The English sentence construction to arrive at the result Appellant urges would have to read "or any county and its subdivisions."

The words chosen were chosen advisedly and under the "Last Antecedent Doctrine" of Statutory Construction, qualifying words, phrases and clauses in a statute are applied to the word or phrase immediately preceding. This method of construction clearly shows that the phrase relates back to the word "State."

POINT IV

CITIES ARE SUBDIVISIONS OF THE STATE OF UTAH

Art. VI, § 26, of the Utah Constitution contains an enumeration of prohibitions against the Legislature which enumerates the cities and counties; it provides:

> "The legislature may repeal any existing special law relating to the foregoing subdivisions. (Emphasis added)

Thus, at the creation of the State and nearly contemporaneous with the passage of exemptions in fee bills, under discussion, the founders of this State considered municipalities subdivisions of the State.

The State statutes also consistently refer to cities as subdivisions of the State of Utah. Some examples of this fact are:

1. Section 63-30-3, Utah Code Ann. 1953, which defines cities as "political subdivisions."

2. Section 51-3-1, Utah Code Ann. 1953, which reads: "When the state or any county, city, town or other political subdivision thereof . . ." (Emphasis added) The entire chapter 3 of Title 51, is entitled "Accounts of Political Subdivisions."

Any argument that claims the City is not a subdivision of the State implies that once a City is created by the Legislature, it becomes a "city-state." Our courts have repeatedly held that such a principle is not applicable in Utah; rather, our law clearly provides that all powers of cities are derived from the State. The State may change the powers of a city as long as the change is uniform for that class of cities

affected. Art. XI, § 5, Constitution of Utah.

Thus, there can be no serious question that a Utah municipality is a political subdivision of the State.

POINT V

SECTION 21-7-2, UTAH CODE ANNOTATED 1953, DOES NOT LIMIT THE EXEMPTION TO "LEGAL SUBDIVISIONS" OF A COUNTY AND ANY SUCH LIMITATION DOES NOT NECESSARILY EXCLUDE CITIES FROM ITS TERM.

Appellant urges the argument that the word subdivision as used meant "Legal Subdivision" of counties, as defined by Art. XI, § 1, Constitution of Utah. Appellant correctly described a rule of construction when he stated that each term of a statute is considered to be used advisedly. The converse is also true. If a word is not used the omission should likewise be taken note of and given effect. Kennecott Copper Corp. v. Anderson, 30 U.2d 102, 514 P.2d 207 (1973). The word "legal" was not attached as a modifier for the word subdivision, showing the Legislature used the term in its broad sense and did not limit it to "legal subdivision" of a county. It applied to the exemption to all subdivisions of the State.

Besides straining the plain language of the statute to include a new word "legal," the argument of defendant-appellant is logically inconsistent. Appellant acknowledges that the words "Legal Subdivision" includes school districts and precincts. Further, as pointed out in Judge Croft's Memorandum Decision, Section 17-16-5, Utah Code Annotated 1953, specifically states that cities are considered one precinct within the county;

therefore, logically a city would be a legal subdivision of the county. This fact is true even under the classification Appellant urges.

Therefore, it is respectfully submitted that under any construction of the statute, the City is exempt from the filing and service fees. It is a subdivision of both the State and County within the meaning and intent of the statute in question.

POINT VI

CITIES CONTRIBUTE TO THE FINANCING AND OPERATION OF THE DISTRICT COURT.

The City residents pay the same taxes as county residents, in addition to paying taxes to run city governments. The County itself is nothing more than its collective taxpaying citizens. County government does administer the funds and collect the taxes, but that is not sufficient distinction to require the City to pay service and filing fees for court actions. If it were, the County should rebate to the City the funds collected so that the City could pay the District Court and sheriff fees directly without causing our taxpayers to pay double for the same service a resident of an unincorporated area pays.

The County courts are not restricted to non-incorporated areas and our citizens are entitled to have the City use the courts free of charge for the carrying out of governmental functions of the City. Each government is nothing more than an administrator to meet the taxpayer's needs and to claim one should be an exempt government and the other not exempt is assinine when the taxpayers are one and the same.

To refute this argument, Appellants point out that cities must pay for use of Federal Courts. Appellants fail to appreciate that we have two different autonomous levels of government in the United States, the State and the Central government. The Central government, commonly known as the Federal government, makes its courts open without fee for its governmental uses. The State government, specifically Utah, does the same by making its State courts available to its governmental subdivisions of which the cities are included, without payment of fees.

We do not have different autonomous levels of government in Utah. All local governments in Utah derive their powers from the State and they cannot and do not claim the autonomy from the State that the States rightfully claim from the Central government through Amendment X to the United States Constitution.

SUMMARY

It is submitted that 75 years of administrative interpretation, as well as legislative history, show that cities are exempted under the provisions of Section 21-7-2, Utah Code Annotated 1953, from payment of fees.

Respectfully submitted,

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